

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of ) File No. 98-KC-290  
 )  
Central Broadcasting, Inc. ) NAL/Acct. No. 815KC0003  
Independence, Kansas )

MEMORANDUM OPINION AND ORDER

Adopted: February 24, 2000

Released: February 25, 2000

By the Chief, Enforcement Bureau:

INTRODUCTION

1. In this order, we grant in part the petition for reconsideration filed on June 29, 1998, by Central Broadcasting, Inc. ("Central"), licensee of Stations KIND(AM) and KIND-FM, Independence, Kansas.<sup>1</sup> Central seeks reconsideration of a *Forfeiture Order*,<sup>2</sup> in which the Chief, Compliance Division, of the former Compliance and Information Bureau ("CIB") found Central liable for a monetary forfeiture in the amount of \$8,000 for willful and repeated violations of Section 11.35 of the Commission's Rules, 47 C.F.R. § 11.35. For the reasons discussed below, we reduce the monetary forfeiture amount to \$2,000.

BACKGROUND

2. On February 4, 1997, Staff from the Commission's Kansas City, Missouri, Field Office ("Field Office") conducted an inspection of Stations KIND and KIND-FM. On the basis of that inspection, on February 14, 1997, the Field Office issued a Notice of Violation ("NOV") to Central for several violations, including a violation of Section 11.35 of the Rules (failure to have an Emergency Alert System ["EAS"] encoder or decoder for the stations). In its February 25, 1997, response to the NOV, Central stated that its stations did not need the encoders and decoders because its stations would not be participating in the

<sup>1</sup> Central submitted a letter from Nelson Rupard, President of Central Broadcasting, Inc. For purposes of this review, we will treat the letter as a petition for reconsideration, pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106. Central incorporates as part of its June 29, 1998, letter a copy of its April 28, 1998, response to the Notice of Apparent Liability ("NAL") issued on April 20, 1998. The *Forfeiture Order* stated that Central had failed to respond to the NAL. Because Central has provided documentation demonstrating that its response was received by the FCC and was timely, we will consider the April 28, 1998, response as part of this petition.

<sup>2</sup> 13 FCC Rcd 16793 (Compl. & Inf. Bureau 1998)

Emergency Broadcast Service (“EBS”)/EAS program. In its March 7, 1997, follow-up letter, the Field Office advised Central that all broadcast stations are required to have properly installed EAS equipment even if they do not participate in the EBS/EAS program. In its March 14, 1997, response, Central stated that it preferred to use the National Oceanic and Atmospheric Administration (“NOAA”) alarms because it considered NOAA alarms “more reliable.”

3. On January 22, 1998, staff from the Field Office again inspected Stations KIND and KIND-FM. During that inspection, the Field Office staff observed that there was no EAS equipment installed. Furthermore, Mr. Rupard informed the inspectors that he had not ordered the required EAS equipment. On January 30, 1998, the Field Office issued a second NOV to Central for several violations of the Rules, including Section 11.35. Central’s February 13, 1998, reply failed to address the EAS violation. On February 23, 1998, the Field Office again sent Central a letter stating that EAS equipment is required for Stations KIND and KIND-FM. Central’s March 13, 1998, response again failed to address the EAS violation. On March 16, 1998, an agent from the Field Office telephoned Mr. Rupard to explain the EAS equipment requirements under Section 11.35 of the Rules, and the penalties for non-compliance. On March 20, 1998, the Field Office received from Central a facsimile of a copy of an order that it had placed for EAS equipment. Subsequently, in a letter dated April 6, 1998, Central stated that the EAS equipment had been delivered.

4. On April 20, 1998, the District Director, Kansas City Field Office, issued a Notice of Apparent Liability (“NAL”) to Central in the amount of \$8,000 for willful and repeated violations of Section 11.35 of the Rules. Subsequently, on June 19, 1998, the Chief, Compliance Division, issued the *Forfeiture Order* affirming the monetary amount of \$8,000.

## DISCUSSION

5. The Field Office issued the forfeiture pursuant to Section 503 of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 503, and Section 1.80 of the Rules. In assessing the forfeiture amount, the Field Office followed the forfeiture standards established in Section 503 of the Act and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407, released December 28, 1999 (“*Policy Statement*”). Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. 47 U.S.C. § 503(b)(2)(D).

6. Central contends that the monetary forfeiture should be cancelled because: (1) the EAS equipment has been installed and is operational; (2) Mr. Rupard mistakenly believed that the EAS program was voluntary; and (3) Mr. Rupard was frustrated by “the need for cash . . . to buy other equipment necessary to keep the stations in technical compliance and regain competitive ground. . . .” Central also submitted financial information indicating that it has gross annual revenues of approximately \$36,000.

7. Central’s arguments provide no basis for cancellation of the forfeiture. The fact that it has taken corrective action does not negate or mitigate its previous violation. *See generally KGV, Inc.*, 42 FCC 2d 258, 259 (1973) (subsequent corrective action will not excuse past violations).

8. Moreover, Central’s mistaken belief argument lacks merit. The Field Office, on several occasions, informed Central that it was required to purchase and install the EAS equipment in its broadcast stations. Central, however, delayed purchasing and installing this equipment for more than a year after actual notice of its violation. Therefore, Central’s failure to comply with the Section 11.35 of the Rules was clearly

willful<sup>3</sup> and repeated.<sup>4</sup>

9. Further, Central's shortage of cash argument does not justify cancellation of the forfeiture. Commission licensees are required to have sufficient financial resources to fulfill their responsibilities. *See, e.g., Midwest St. Louis, Inc., et al*, 59 FCC2d 805 (1976). We do, however, find that a reduction of the forfeiture is warranted in light of the financial information submitted by Central.

10. Accordingly, based on a review of the record before us and the factors outlined in Section 503(b) of the Act, Section 1.80 of the Rules and the *Policy Statement*, we find that a forfeiture in the amount of \$2,000 is appropriate.

### ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 1.106 of the Rules, Central Broadcasting, Inc.'s petition for reconsideration of the *Forfeiture Order*, NAL No. 815KC0003, issued to it on June 19, 1998, IS **DENIED IN PART** and **GRANTED ONLY TO THE EXTENT INDICATED BY THIS ORDER**.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, Central Broadcasting, Inc. must pay the amount of \$2,000 within thirty (30) days of the release date of this Order. Payment may be made by check or money order, drawn on an U.S. financial institution, payable to the "Federal Communications Commission." Payment may also be made by credit card with the appropriate documentation.<sup>5</sup> The remittance should be marked NAL Acct. No. 815KC0003 and mailed to the following address:

Federal Communications Commission  
P.O. Box 73482  
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U.S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

13. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent certified mail, return-

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<sup>3</sup>Section 312(f)(1) of the Act, 47 U.S.C. § 312(f), which also applies to Section 503(b) of the Act, provides: "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>4</sup>Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies to Section 503(b) of the Act, provides that the term "repeated," when used with reference to the commission or omission of any act, means the commission or omission of such act more than once, or, if such commission or omission is continuous, for more than one day.

<sup>5</sup>Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Rules, 47 C.F.R. § 1.1914. Requests for installment plans should be mailed to: Chief, Credit & Debt Management Center, Mail Stop 1110A2, 445 12th Street, S.W., Washington D.C. 20554. For information regarding credit card payments, contact the Chief, Credit & Debt Management Center at (202) 418-1995.

receipt requested, to Central Broadcasting, Inc.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau